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HUB LAW OFFICES

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 IN AND FOR THE COUNTY OF LOS ANGELES  
12

13 CHURCH OF SCIENTOLOGY )  
14 INTERNATIONAL, a California )  
not-for-profit religious )  
15 corporation; )  
16 Plaintiffs, )  
17 vs. )  
18 GERALD ARMSTRONG; DOES 1 )  
through 25, inclusive, )  
19 Defendants. )  
20 )  
21 )

No. BC 052395  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION TO STRIKE SURPLUSAGE,  
IRRELEVANT, AND IMPROPER  
MATERIAL FROM AMENED VERIFIED  
COMPLAINT FOR DAMAGES AND FOR  
PRELIMINARY AND PERMANENT  
INJUNCTIVE RELIEF FOR BREACH OF  
CONTRACT

Date: July 2, 1992  
Time: 8:30 a.m.  
Dept: 30  
Motion Cut Off: Not Set  
Discovery Cut Off: Not Set  
Trial Date: None

23 I. STATEMENT OF FACTS

24 The complaint for breach of contract in this case is  
25 predicated upon a settlement agreement that was executed on  
26 December 6, 1986. (Cmplt. at pp. 1:23-2:8; Request for Judicial  
27  
28

COPY



1 Notice ("RJN"), Ex. A at p. 16) <sup>1/</sup> In pertinent part, Paragraph  
2 9 of the agreement states:

3 This Mutual Release of All Claims and Settlement Agreement  
4 contains the entire agreement between the parties hereto, and  
5 the terms of this Agreement are contractual and not a mere  
6 recital. . . No other prior or contemporaneous agreements,  
7 oral or written, respecting such matters, which are not  
8 specifically incorporated herein shall be deemed to in any  
9 way exist or bind any of the parties hereto.

10 (Id. at pp. 12-13)

11 Paragraph 7I of the agreement states in its entirety:

12 The parties hereto agree that in the event of any future  
13 litigation between Plaintiff and any of the organizations,  
14 individuals or entities listed in Paragraph 1 above, that any  
15 past action or activity, either alleged in this lawsuit or  
16 activity similar in fact to the evidence that was developed  
17 during the course of this lawsuit, will not be used by either  
18 party against the other in any future litigation. In other  
19 words, the "slate" is wiped clean concerning past actions by  
20 any party.

21 (Id. at p. 11)

22 **II. THE LANGUAGE OF THE COMPLAINT IDENTIFIED IN THE NOTICE  
23 MUST BE STRICKEN BECAUSE IT IS IRRELEVANT, CONTRARY TO  
24 THE TERMS OF THE AGREEMENT WHICH SCIENTOLOGY SEEKS TO  
25 ENFORCE, AND INFLAMMATORY**

26 A motion to strike may be served in conjunction with a  
27 demurrer, (C.C.P. § 435), and shall be heard concurrently  
28 therewith. California Rules of Court 329.

Based upon the fact that plaintiff's complaint is a simple  
breach of contract action, and upon the specific language of the  
contractual instrument upon which plaintiff relies to prosecute  
this lawsuit, it is clear that all references in the complaint -  
identified in the notice of this motion to strike - to any

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<sup>1</sup> In light of the fact that the herein motion to strike is  
filed concurrently with a demurrer, this motion will rely on the  
request for judicial notice filed on May 13, 1992 in connection  
with the original demurrer. Thus all citations herein designated  
RJN made herein refer to said request for judicial notice.



1 activity alleged to have perpetrated by Armstrong which predate  
2 December 6, 1986 are irrelevant to claims of breach of the  
3 agreement.

4 Such material is irrelevant on another ground because  
5 Paragraph 9 of the agreement states that the agreement is the  
6 entire understanding of the parties.

7 The grounds for a motion to strike may include irrelevant,  
8 false or improper matter. (C.C.P. § 436 (a); American  
9 Aeronautics Corp. v. Grand Central Aircraft Co. (1957) 155  
10 Cal.App.2d 69, 84, 317 P.2d 694, 704) Irrelevant material  
11 includes allegations that are not essential to the claim of the  
12 complaint. (C.C.P. § 431.10 (b)) <sup>2/</sup>

13 Indeed, while Scientology seeks to enforce the agreement on  
14 one hand, it speaks out of the other side of its corporate mouth  
15 when the very allegations of its complaint disregard the  
16 provisions of paragraph 7I of the precise agreement it seeks to  
17 enforce. Such pleading is contradictory and should be stricken.  
18 Since the material in the paragraphs that are the subject of this  
19 motion is precluded by the terms set forth in Paragraph 7I of the  
20 agreement, it is not filed in conformity with the laws of  
21 California because Scientology cannot have it both ways. (C.C.P.  
22 § 436 (b) see Tostevin v. Douglas (1958) 160 Cal.App.2d 321, 330,  
23 325 P.2d 130, 136; Neal v. Bank of America (1949) 93 Cal.App.2d  
24 678, 209 P.2d 825)

25 Moreover, both the language and the paragraphs that are the  
26


27 <sup>2</sup> In addition to the language set forth on the face of the  
28 pleadings, a motion to strike may rely on matters which are the  
proper subject of judicial notice. (C.C.P. § 437)

1 subject of this motion is language that should be stricken because  
2 it is inflammatory and not the subject of any claim for punitive  
3 damages. (See Bartling v. Glendale Adventist Medical Center  
4 (1986) 184 Cal.App.3d 961, 970, 229 Cal.Rptr. 360, 364)

5 CONCLUSION

6 Based upon the arguments set forth above, it is submitted  
7 that defendant ARMSTRONG's motion to strike should be granted.

8 DATED: June 16, 1992

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11 By: FORD GREENE and PAUL MORANTZ  
12 Attorneys for Defendant  
13 GERALD ARMSTRONG  
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